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1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

II. FINDINGS OF FACT

2.1 Appellant Cynthia Britts is a Laundry Worker 1 and permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on May 17, 2000.

2.2 By letter dated April 18, 2000, Tom Bumgarner, Administrator for Consolidated Support Services, informed Appellant of her three-day suspension without pay effective May 16, 2000. Mr. Bumgarner charged Appellant with neglect of duty, insubordination, and gross misconduct, and he specifically alleged that Appellant failed to adhere to supervisory expectations when she attempted to create discord and conflict for supervisory staff when on four separate occasions, she falsely accused her supervisor of lying.

2.3 Appellant began her state employment in January 1984. Appellant has been employed in the Consolidated Support Services Laundry for approximately 11 years. Appellant's work performance as a Laundry Worker 1 has primarily been rated as meets normal requirements, however, concerns regarding her interpersonal relationship with coworkers and supervisors have been addressed with Appellant in her evaluations. In her employee performance evaluation signed by Appellant on April 14, 1997, Appellant's supervisor noted that Appellant at times displayed a lack of respect for those in authority.

1 2.4 Appellant received prior directives and guidance regarding her workplace behavior. On
2 September 9, 1999, Appellant received a letter of concern after she became angry and agitated and
3 began to slam laundry carts around. By letter dated July 27, 1999, Appellant received a two-day
4 suspension without pay for making insulting and derogatory comments about her superiors (PAB
5 Case No. SUSP-99-0026). By memo dated May 24, 1999, Appellant was instructed to conduct
6 herself in a professional and dignified manner and do her part in promoting a positive image for the
7 department. Appellant received a letter of reprimand dated July 2, 1998, for behaving herself in an
8 unprofessional and disrespectful manner when she mimicked her supervisor's Vietnamese accent
9 despite a previous directive to refrain from such behavior. By memo dated May 8, 1998, Appellant
10 was instructed to be respectful of other employees and to conduct herself with professionalism and
11 dignity. On April 28, 1998, Appellant was instructed to follow directions given by her supervisor
12 without becoming argumentative, negative, hostile or using inappropriate remarks.

13
14 2.5 Due to difficulties and tension created by poor working relationships among laundry
15 employees, management began to address appropriate workplace behavior with staff. By memo
16 dated June 8, 1995, Respondent instructed employees to cease engaging in any behavior that was
17 threatening, intimidating, insulting or harassing toward others. By memo dated November 3, 1995,
18 Terry LaFrance, Operations Manager, directed laundry staff to cease the use of offensive and
19 insulting language. By memo dated April 7, 1998, Tom Bumgarner, Administrator, addressed poor
20 interpersonal relationships and encouraged employees to work as a team. In addition, management
21 provided laundry staff with training to discuss workplace behavior and concerns and to teach staff
22 conflict resolution skills. Appellant received copies of the memos, attended the training, and she
23 was aware of Respondent's expectations regarding appropriate workplace behavior.

24
25 2.6 Appellant is supervised by Dale Birchler, Laundry Supervisor. Appellant's assigned work
26 schedule begins at 6:45 a.m. and ends at 3 p.m. The work routine at the laundry is to sort dirty

1 laundry first and it is considered the day's top work priority. Normally, the dirty laundry was
2 delivered to the laundry by the time Appellant arrived at work. However, on occasions when it had
3 not been delivered, staff performed other work until the dirty laundry arrived.

4
5 2.7 On January 12, 2000, Appellant arrived for her shift and noted the dirty laundry had not
6 been delivered. Appellant stated to Mr. Birchler, "we have no dirty laundry," and Mr. Birchler
7 responded, "well we have terry cloth." The term "terry cloth" indicated that there was clean terry
8 cloth towels to fold. Appellant understood Mr. Birchler's comment to mean that she should fold
9 clean laundry until the dirty linen arrived. Appellant left to get a cup of coffee with the intention of
10 returning to fold the clean linen.

11
12 2.8 At some undetermined time that morning, Mr. Birchler told his work crew to go ahead and
13 finish folding the clean laundry until the task was completed, rather than beginning to sort dirty
14 laundry once it arrived. Mr. Birchler made this statement either prior to Appellant's arrival at work
15 that morning or as Appellant turned to leave the area to go on a coffee break. Mr. Birchler testified
16 that he was not certain that Appellant heard his statement. Therefore, we find that it was more
17 likely than not that Appellant did not hear Mr. Birchler's instruction to finish folding terry cloth
18 prior to sorting the dirty linen.

19
20 2.9 As Appellant walked toward the break room, she noticed that the truck carrying the dirty
21 laundry had arrived. Therefore, Appellant proceeded to sort dirty laundry rather than returning to
22 fold towels.

23
24 2.10 A short while later, Laundry Supervisor Mary Garza-Payne entered the dirty laundry sorting
25 area. She and Appellant engaged in a conversation where they discussed why Appellant was the
26 only one sorting the dirty laundry. In response, Ms. Garza-Payne approached Mr. Birchler and

1 asked whether Appellant was going to get any help. Mr. Birchler responded that Appellant was
2 supposed to be folding clean linen. Ms. Garza-Payne returned to Appellant and told her what Mr.
3 Birchler had said. Appellant responded to Ms. Garza-Payne, “well, that’s a lie.” Appellant
4 continued to sort dirty laundry and approximately 15 to 20 minutes later, the remainder of the crew
5 joined Appellant.

6
7 2.11 Later that day, Appellant talked to Mr. Bircher’s supervisor, Patsy Brannon. Appellant
8 described the incident and expressed her concerned that Mr. Birchler believed she had failed to
9 follow a supervisory directive. Ms. Brannon asked Appellant to put her concern in writing and that
10 she would investigate. Appellant stated that she still wanted to check with her union to determine
11 what to do. Ms. Garza-Payne also approached Ms. Brannon about the incident and told her that
12 there had been a “misunderstanding” between Appellant and Mr. Birchler when Appellant had
13 needed help sorting laundry.

14
15 2.12 Within the next several days, Ms. Brannon and Appellant spoke about the incident and
16 Appellant expressed her anger that Mr. Birchler had “lied” about giving her a directive “to fold
17 terry.” Ms. Brannon again asked Appellant to put her complaint in writing because that was the
18 only way she “could do something about it.” Appellant again stated that she was unsure about
19 filing a complaint because she had not talked to her union.

20
21 2.13 Ms. Brannon and Appellant spoke on a third occasions about the incident. Each time, Ms.
22 Brannon asked Appellant to “put it in writing” because the timeframe for filing a complaint was
23 going to expire. Appellant was still unsure about whether to file a written complaint.

24
25 2.14 Ms. Brannon ultimately called Appellant’s union representative on January 27, 2000, and
26 requested they meet with Appellant. During the meeting, Appellant described the incident again

1 and stated the Mr. Birchler had lied about instructing her to fold terry. Ms. Brannon subsequently
2 initiated an investigation into the January 12 incident.

3
4 2.15 On February 10, 2000, Ms. Brannon initiated a Conduct Investigation Report (CIR) against
5 Appellant alleging as follows:

6
7 During a meeting on January 27, 2000, in the presence of your union
8 representative, Steve Marll, to investigate your contention to Mary Garza-Payne
9 and myself that Dale Birchler, Laundry Worker II, had lied about giving you a
10 directive on January 12, 2000 to work in the terry cloth area. You admitted that
11 you did in fact have knowledge of your supervisor's directive. . . .

12 2.16 As a result of that investigation, Ms. Brannon concluded that Appellant falsely accused Mr.
13 Birchler of lying on four occasions. Ms. Brannon also concluded that Appellant failed to disclose
14 her awareness that Mr. Birchler had instructed her to fold terry.

15 2.17 Tom Bumgarner, Administrator for Consolidated Support Services, made the determination
16 of misconduct in this case after reviewing the CIR on the incident and the results of the
17 investigation. Mr. Bumgarner concluded that Appellant failed to follow previous instructions to be
18 professional, a team player and to create a positive work environment with her coworkers and
19 supervisors when she failed to clarify the January 12, 2000 incident with Mr. Birchler. Mr.
20 Bumgarner concluded that Appellant used the confusion surrounding the incident to "stir the pot"
21 and go out of the chain of command and allege that Mr. Birchler had lied. Mr. Bumgarner believed
22 that Appellant repeatedly approached Ms. Brannon about the incident, but refused to be proactive
23 and clear up the issue. Mr. Bumgarner also determined that Appellant failed to clarify with Ms.
24 Brannon that she heard the instruction from Mr. Birchler and it was not until they met on
25 January 27, that Appellant admitted that she had heard Mr. Birchler's instruction. Mr. Bumgarner
26 concluded that a three-day suspension was the appropriate sanction to impress upon Appellant the

1 importance of her relationships with her coworkers and resolve work issues in a productive and
2 positive manner.

3
4 2.18 Appellant and Mr. Birchler never discussed the incident, however, Mr. Birchler did not
5 believe that Appellant was disobeying his instruction to fold clean linen. When Appellant did not
6 return to fold towels, Mr. Birchler assumed she had started to sort the dirty laundry.

7
8 2.19 Based on the sequence of events, we do not find that Appellant falsely accused Mr. Birchler
9 of lying when she spoke to Ms. Garza-Payne and Ms. Brannon about the incident. Although
10 Appellant used a poor choice of words to express her fear that Mr. Bircher might believe that she
11 had disobeyed his instructions, the evidence does not support that this incident was anything more
12 than a “misunderstanding.” We understand the appointing authority’s concerns with Appellant’s
13 history of disregarding supervisory authority, however, we do not find that Appellant was
14 intentionally trying to “stir the pot” in order to create mischief or cause harm to her supervisor.
15 Based on the contentious environment in the laundry, it is clear that Appellant’s motivation when
16 she came forward was to protect herself and clarify that she had not been given an official directive
17 to fold towels.

18 19 **III. ARGUMENTS OF THE PARTIES**

20 3.1 Respondent argues that Appellant failed to follow the expectations she had been given to be
21 professional, follow the chain of command, be a team member and to avoid creating hostility in the
22 workplace. Respondent argues that Appellant failed to clarify that she understood that Mr. Birchler
23 had instructed her to fold terry cloth, but that instead she used confusion over the instruction to
24 falsely accuse Mr. Birchler of lying. Respondent argues that Appellant neglected her duty and was
25 insubordinate when she failed to follow instructions she had been given about appropriate work
26

1 behavior. Respondent further asserts that Appellant's conduct rises to the level of gross misconduct
2 and warrants a three-day suspension.

3
4 3.2 Appellant argues that there was confusion on the morning of January 12 and that a minor
5 event was blown out of proportion. Appellant argues that based on prior practice, she began to sort
6 the dirty laundry when it arrived. Appellant admits that her comment that Mr. Birchler was lying
7 holds strong connotations, but asserts that she meant to clarify that she had not been given a direct
8 order to fold clean laundry. Appellant argues that Ms. Brannon insisted that she put her statement
9 in writing because Ms. Brannon wanted to get Mr. Birchler in trouble. Appellant argues that
10 Respondent has failed to meet its burden and she asserts that her appeal should be granted.

11 12 IV. CONCLUSIONS OF LAW

13 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
14 herein.

15
16 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
17 the charges upon which the action was initiated by proving by a preponderance of the credible
18 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
19 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-
20 240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

21
22 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
23 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
24 of Social & Health Services, PAB No. D86-119 (1987).

1 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior
2 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
3 Dep't of Social & Health Services, PAB No. D94-025 (1995).

4
5 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
6 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

7
8 4.6 Respondent has failed to meet its burden of proving by a preponderance of the evidence that
9 Appellant attempted to create discord and conflict for supervisory staff by falsely accusing
10 Mr. Birchler of lying on four occasions. Respondent has failed to prove the charges of neglect of
11 duty, insubordination and gross misconduct. Therefore, the appeal of Cynthia Britts should be
12 granted, and the disciplinary sanction of a three-day suspension without pay should be reversed.

13
14 **V. ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Cynthia Britts is granted.

16
17 DATED this _____ day of _____, 2001.

18
19 WASHINGTON STATE PERSONNEL APPEALS BOARD

20
21 _____
22 Walter T. Hubbard, Chair

23
24 _____
25 Gerald L. Morgen, Vice Chair